

**REMARKS**

The present invention is a software delivery apparatus, a method of delivering software to a terminal, a system for delivering software to a terminal and an application service provider. A software delivery apparatus in accordance with an embodiment of the invention comprises a controller 53 connectable to a terminal 1 in responsive to a request therefrom 35 for software, and a terminal emulator 65 operable in accordance with a configuration of the terminal to validate the software prior to delivery to the terminal. See page 8, lines 15-24 through page 10, lines 1-17 of the specification.

The ASP 33 stores the terminal profile and by providing emulation determines that the validated software can be run on the terminal to which delivery is made which eliminates the need for delivery of configuration data. This facilitates the terminal being provided from the terminal manufacturer in the "so-call thin implementation" and thereafter the terminal provides configuration information in tandem with a request for software which may be used to generate an emulation through a network connection to the ASP to thereby update the terminal to run the requested software. See page 2, lines 8-24 through page 3, lines 1-14 of the specification.

Claim 16 stands rejected under 35 U.S.C. 101 as being drawn to non-statutory subject matter. This ground of rejection is traversed for the following reasons.

The Examiner has not rejected claim 15 as being non-statutory subject matter which recites "a computer program comprising executable code for execution when loaded on a computer wherein the computer is operable in accordance with said code to carry out the method according to claim 6". Therefore, claim 16, which further limits

claim 15, is limited to executable code for execution when loaded on a computer. Therefore the statement of the Examiner that "to be statutory, the computer product should include a program comprising instructions which when executed in a computer performs a process comprising the steps included in the limitations" is present claim 16 in view of the dependency on claim 15.

Claims 1-3, 5-9, 11-15, 17-18, 21, 23-24, 27, 31-33 and 35 stand rejected under 35 U.S.C. 102 as being anticipated by U.S. Patent No. 6,170,060 (Mott, et al.). These grounds of rejection traversed for the following reasons.

Claims 1, 6 and 12 substantively recite a request for software in which emulation is performed in accordance with a configuration of the terminal to validate software prior to delivery to the terminal. This subject matter has no counter part in Mott, et al.

Mott, et al. disclosed a system in Fig. 2 in which a library site 250 downloads software to client computer system 214 which includes a software player 226 which emulates the operation of a mobile playback device 212. The mobile playback device is configured to be removable from the client computer system. See column 2, lines 60-66 and column 5, lines 15-26. It is therefore seen that the digital library system 250 becomes a source of software which is executable by the software player 226 which emulates the mobile playback device 212. Column 9, lines 42-56 describe the software player as being a software module used to emulate the operation of the mobile playback device 212 and for playing digital information files through the sound circuitry 130 and an audio output device 132 of the client computer system and further that the software player is functionally the equivalent of the functionality and operation of the mobile playback device.

To the extent that the software player 226 emulates the playback device 212, it does not perform the claimed function of validating software prior to delivery to the terminal. The Examiner refers to column 11, lines 33-42 for the teachings of validation of software prior to delivery of the terminal. However, the disclosure therein refers to a targeting profile "whereby the library server 260 utilizes a set of identifiers (i.e. player ids) for mobile playback devices 212 authorized to receive the selected download data from the library server". It is therefore seen that the targeting protocol is utilized by the library server 260 which is not described as an emulator since it is the source of the files to be played by the software player 226. This relationship does not meet the claimed emulator of validating the software prior to delivery to the terminal.

If Examiner persists in the stated grounds of rejection it is requested that the Examiner point out on the record how the software player 226, which he has construed in lines 42-45 of column 9 to be the software player, performs the function of validating software prior to delivery of the terminal in that it is the library server 260 which performs this function which is not described as an emulator.

Claim 17 recites:

An application service provider comprising a controller operable to receive a request originating from a terminal, said request identifying a software element for delivery to said terminal, said controller being further operable to determine a configuration of said terminal and in response to said determination to source an appropriate software element to said terminal for delivery to said terminal.

The Examiner reasons with respect to claim 17 as follows:

As per claim 17, Mott, et al. teaches an application service provider (CL2, L60-65), comprising a controller operable to receive a request originating from a terminal the request identifying a software element for delivery to the

terminal (CL8, L2-4; CL8, L59-60), sourcing the software (CL5, L46-54; CL5, L66 to CL6, L4), the controller being further operable to determine a configuration of the terminal (CL8, L47-56), and in response to the determination to source an appropriate software element to the terminal for delivery to the terminal (CL5, L46-54; CL8, L61-62).

While column 8, lines 2-4 do disclose receiving a request for access to digital information files from client computer systems 214, it is noted that the request as recited in claim 17 is a request from the terminal which in Mott, et al. is, as described above, the mobile playback device 212. Moreover, while column 8, lines 47-56 do refer to player configuration data of the playback device 212 and the software player being stored in the library server 260 which can be customized or updated, it is submitted that such disclosure does not suggest a controller being further operable to determine a configuration of said terminal and in response to said determination to source an appropriate software element to said terminal for delivery to said terminal.

It is submitted that general referencing to updating does not meet the operation of the controller which is operable to receive a request originating from a terminal identifying a software element for delivery to the terminal and the terminal being further operable to determine a configuration of the terminal and response to said determination to source an appropriate software element to said terminal for delivery to said terminal. The general reference in column 8, lines 47-56 regarding updating is not with respect to the aforementioned sequence.

The dependent claims 2-3, 5, 7-9, 11, 13-15, 18, 21, 23-24, 27, 31-33 and 35 are also not anticipated for the reasons set forth above.

Claim 7 recites were the emulation is performed in accordance with a configuration derived from said terminal. While column 8, lines 47-56 do refer to updating configuration

data, it is submitted that this disclosure does not meet the subject matter of claim 7.

Claims 8 and 27 further limit claim 6 in reciting its emulation is performed in accordance with a configuration derived from an access network to which said terminal is connected. The referenced portion of column 8, lines 47-56 does not disclose this subject matter. Claims 9 and 35 are patentable for the same reasons set forth above with respect to claims 8 and 27.

Claim 11 further limits claim 6 in reciting selecting a software provider from whom said software is sourced in accordance with a database holding details of software sources. While the referenced portion of column 5 does refer to other sources of digital information, it is submitted that this disclosure does not meet claims 11 and 31-33.

Claim 15 is patentable for the same reasons set forth above with respect to claim 6.

Claim 18 further limits claim 17 in reciting that the controller is operable to generate a user profile in response to a determination of the configuration of the terminal. While column 8 lines 13-24 do refer to client personal information and user content preferences, it is submitted that such information does not pertain to the claimed generating a user profile in response to a determination of the configuration of the terminal as recited in the claims.

Claim 21 further limits claim 19 in reciting that the controller is operable to source the software only where the request is compatible to the user profile. It is submitted that column 8, lines 13-16 do not disclose this subject matter.

Claim 23 further limits claim 17 in reciting that the controller is operable to access a database maintaining a list of provider addresses where software elements may be sourced. While column 5, lines 46-54 as discussed do refer to other sources of digital information, it is submitted that the reference to sources of digital information does not teach the list of provider addresses where elements may be sourced.

Claim 24 is patentable for the same reason set forth above with respect to claim 23.

Claims 4, 25 and 26 stand rejected under 35 U.S.C. 103 as being unpatentable over Mott, et al. in view of U.S. Published Application 2001/0003828 (Peterson, et al.). These grounds of rejection are traversed for the following reasons.

Peterson, et al. has been cited as teaching that the terminal is set top box. However, the disclosure Peterson, et al. of a set top box does not cure the deficiencies noted above with respect to claim 1. Accordingly, if the proposed combination were made, the subject matter of claims 4, 25 and 26 would not be obtained except by impermissible hindsight.

Claims 10, 19, 28-30 and 34 stand rejected under 35 U.S.C. 103 as being unpatentable over Mott, et al. in view of U.S. Patent No. 6,772,192 (Fulton, et al.). These grounds of rejection are traversed for the following reasons.

Fulton, et al. has been cited as teaching that a configuration of a terminal may be derived from a manufacturer. However, Fulton et al. does not cure the deficiencies noted above with respect to Fulton which is submitted to not disclose the claimed emulation and does not render obvious that emulation is performed accordance with a configuration derived from a manufacturer of the terminal as recited in claims 10 and 28-30.

The subject matter of claim 19 further limits the subject matter of claim 18 in reciting that the controller is operable to supplement the profile using information provided by a manufacturer of the terminal. It is submitted that a person of ordinary skill in the art would not be motivated to combine the teachings of Fulton, et al. to arrive at the subject matter of claim 19 except by impermissible hindsight.

Claim 34 is patentable for the same reason as set forth above with respect to claim 10.

Claim 20 stands rejected under 35 U.S.C. 103 as being unpatentable over Mott, et al.

in view of U.S. Patent 5,978,855 (Metz, et al.). Metz, et al. has been cited to suggest a controller which is operable to supplement the profile using information provided by an operator or network of which the terminal is a member. However, Metz, et al. does not cure the deficiencies noted above with respect to Mott, et al.

Claim 22 stands rejected under 35 U.S.C. 103 as being unpatentable over Mott, et al. in view of U.S. Patent 6,529,938 (Cochran, et al.) further in view of Fulton, et al. These grounds of rejection are traversed for the following reasons.

Cochran, et al. has been cited as teaching a controller which is operable to identify what software elements are required to achieve terminal configurations in view of Fulton, et al. suggesting installed software should generally match terminal hardware. It is submitted that the combination of Cochran, et al. and Fulton, et al. do not cure the deficiencies noted above with respect to Mott, et al. as discussed above with respect to the rejection of claim 17. Moreover, the proposed combination is based on impermissible hindsight.

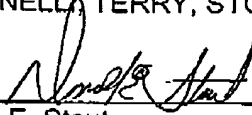
In view of the foregoing amendments and remarks, it is submitted that each of the claims in the application is in condition for allowance. Accordingly, early allowance thereof is respectfully requested.

To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. §1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135

(0171.39605X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,

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